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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,046	02/04/2004	Thomas W. Schrimsher SR.	228-002.001 Shrock	3921
31179 7590 04/12/2007 BOTKIN & HALL, LLP 105 E. JEFFERSON BLVD. SUITE 400 SOUTH BEND, IN 46601			EXAMINER EDEL, JOSEPH F	
			ART UNIT 3636	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/12/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/772,046	SCHRIMSHER, THOMAS W.	
	Examiner	Art Unit	
	Joseph F. Edell	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Upon consideration of Applicant's arguments in the Appeal Brief filed 22 December 2006, the final rejections of the last Office Action have been withdrawn.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 310,255 to Cook in view of U.S. Patent No. 5,528,778 to Shrock et al.

Cook discloses a seating that is basically the same as that recited in claims 1-17 except that the main supporting member lacks seat and back frames, as recited in the claims. See Figures 1 and 2 of Cook for the teaching that the seating has a main supporting member *B* pivotally connected to a fixed support *D* mounted to a vertical wall *G* and being movable between a vertical storage position adjacent to the wall and a horizontal use position, a leg *N* pivotally mounted on the main support member and movable between an active position projecting from the main support member when the main supporting member is in the use position and a folded position toward the wall and tucked along the main supporting member when the main supporting member is in the storage position, and an actuating link *P* pivotally connected to the fixed support and

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engaging the leg to move the leg from the active position to the folded position when the main supporting member is moved from the use position to the storage position and from the folded position to the active position as the main supporting member is moved from the storage position to the use position wherein the actuating link is a rigid member pivotally connected to the leg between opposite ends thereof and pivotally connected to the fixed support, and the arm *m* being immovable and the actuating link being movable and connected to the immovable arm through a pivot connection.

Shrock et al. show a seating similar to that of Cook wherein the seating has a main supporting member 18 (see Fig. 3), a seat frame 70 and a back frame 72 each slidably mounted on the main supporting member and movable relative to one another and to the main supporting member toward and away from the rear portion of the main supporting member between a seating position (Fig. 5) in which the back frame is inclined with respect to the seat frame with the main supporting member in the use position and into a flat horizontal auxiliary position (Fig. 3) wherein the seat and back frames lie in the same plane and are flush with one another to define a horizontal flat surface, the seat and back frames are each pivotally mounted on the main supporting member, and a linkage means 50,52,62,64,66 connects the seat and back frames to the main supporting member. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seating of Cook such that the seating has a seat frame and a back frame each movably/slidably mounted on the main supporting member and movable relative to one another and to the main support member toward and away from the wall between a seating position in

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which the back frame is inclined with respect to the seat frame with the main supporting member in the use position and into a flat horizontal auxiliary position wherein the seat and back frames lie in the same plane permitting the main support member to be moved into the storage position and being flush with one another to define a horizontal flat surface when the main supporting member is in the use position and extending vertically when the main supporting member is moved into the storage position, the seat and back frames are each pivotally mounted on the main supporting member, and a linkage means connects the seat and back frames to the main supporting member, such as the seating disclosed by Shrock et al. One would have been motivated to make such a modification in view of the suggestion in Shrock et al. that the relatively moveable seat and back frame allow the seating to move between a seat position and a bed position.

Claims 8 and 12 use "linkage means" and "supporting means," which each fails to invoke 35 U.S.C. 112, sixth paragraph, because it does not meet the three prong analysis set forth in MPEP § 2181.

Response to Arguments

3. Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to seatings:

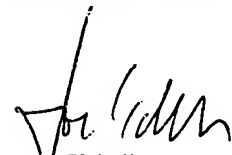
U.S. Pat. No. 1,057,256 to McCarry U.S. Pat. No. 2,547,863 to Godschalk

U.S. Pat. No. 5,671,948 to Susko et al. U.S. Pat. No. 6,779,208 B2 to Lim et al.

U.S. Pat. No. 6,886,878 B2 to Schambre et al.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Joe Edell
April 11, 2007